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Paper No. 12
CEW

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re AtNoCost.Com

Serial No. 75/771,607

Malcolm B. Wittenberg of Crosby, Heafey, Roach & May for applicant.

Jessie W. Billings, Trademark Examining Attorney, Law Office 103 (Dan Vavonese, Acting Managing Attorney).

Before Hohein, Walters and Bottorff, Administrative Trademark Judges.

Opinion by Walters, Administrative Trademark Judge:

AtNoCost.Com has filed a trademark application to register the mark ATNOCOST.COM for, as amended, "gathering data regarding consumer goods over a worldwide computer network."¹

The Trademark Examining Attorney has issued a final refusal to register, under Section 2(e)(1) of the Trademark

¹ Serial No. 75/771,607, in International Class 35, filed August 9, 1999, based on an allegation of a bona fide intention to use the mark in commerce.

Act, 15 U.S.C. 1052(e)(1), on the ground that applicant's mark is merely descriptive of its services.²

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested. We affirm the refusal to register.

The Examining Attorney contends that "the term 'at no cost' means that the goods or services being provided are being provided for free"; and that this describes a characteristic of applicant's services, *i.e.*, that they are being provided at no cost to the consumer. The Examining Attorney states the following:

A consumer encountering the mark ATNOCOST.COM will assume that free services will be provided at the web site. The consumer will in fact be given free product samples, as conceded by the applicant (Applicant's Brief p. 5). Data will also be gathered. The consumers will not be charged for submitting this data. The applicant has not argued that there will be fees of any type charged at the web site. Therefore, any services provided to the consumer on the web site will be provided "at no cost."

In support of her position, the Examining Attorney submitted excerpts of articles from the LEXIS/NEXIS database. The excerpts demonstrate that consumers are used

² Applicant's original recitation of services was "gathering data and offering samples of consumer goods over a worldwide computer network." In response to the Examining Attorney's requirement to amend its recitation of services, applicant adopted as a recitation "dissemination of advertising and free samples of goods for others and gathering demographic information for the advertisers via an on-line electronic communications network." Following the issuance of a final refusal on the ground that the mark is merely descriptive in connection with the identified services, applicant further amended the recitation as indicated herein. The Examining Attorney accepted this amendment.

to seeing reference to the availability of samples of various products "at no cost," meaning that the samples are available for free.

Applicant does not contest the Examining Attorney's contention that "at no cost" is synonymous with "free."

Further, applicant describes its services as follows:

Applicant's business model is to employ the world wide web in order to gather demographic information for manufacturers of consumer goods by attracting consumers to applicant's web site by offering free samples on behalf of those manufacturers seeking such information. Specifically, in exchange for receiving free samples of desirable consumer goods, those logging on to applicant's web site are asked to fill in one or more forms requesting information regarding consumer preference for one product over another as well as a consumer's buying habits and what characteristics of which goods are considered by the consumer to be important in making purchasing decisions.

Applicant expressly "concedes that, in commerce, applicant does provide free samples to participants engaged in providing demographic information to applicant over its website." However, applicant argues that registrability must be determined solely on the basis of the recited services and that, in this case, applicant has amended its recitation of services to delete reference to the fact that it gives away free samples in exchange for data obtained from consumers.

The test for determining whether a mark is merely descriptive is whether the involved term immediately conveys

information concerning a significant quality, characteristic, function, ingredient, attribute or feature of the product or service in connection with which it is used, or intended to be used. *In re Engineering Systems Corp.*, 2 USPQ2d 1075 (TTAB 1986); *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979). It is not necessary, in order to find a mark merely descriptive, that the mark describe each feature of the goods or services, only that it describe a single, significant quality, feature, etc. *In re Venture Lending Associates*, 226 USPQ 285 (TTAB 1985). Further, it is well-established that the determination of mere descriptiveness must be made not in the abstract or on the basis of guesswork, but in relation to the goods or services for which registration is sought, the context in which the mark is used, and the impact that it is likely to make on the average purchaser of such goods or services. *In re Recovery*, 196 USPQ 830 (TTAB 1977).

We conclude, first, that ".com" has no source-indicating function, because it is merely an indication of a portion of an address on the Web.³ Additionally, we conclude that the ATNOCOST portion of applicant's mark is likely to be perceived as the phrase "at no cost," which the evidence establishes will be understood as synonymous with

³ In their briefs, neither the Examining Attorney nor applicant discusses the ".COM" portion of applicant's mark.

the word "free." This is especially so since such portion would have no other readily discernable significance.

We agree with the Examining Attorney that consumers are likely to understand, from the term ATNOCOST.COM, that applicant offers something free, specifically, samples of goods, through its web site; and, moreover, that this is a significant characteristic of applicant's services. While applicant has amended its recitation of services to delete reference to the fact that it gives away free samples of products, applicant concedes that this is an aspect of its services. This fact is not negated merely because the recitation of services does not specify this aspect of applicant's services - it is clear that the offering of free samples is encompassed within the services as identified. As applicant notes, applicant obtains its demographic data in exchange for the free samples it offers its customers.

In the present case, it is our view that, when applied to applicant's services, the term ATNOCOST.COM immediately describes, without conjecture or speculation, a significant feature or characteristic of applicant's services, namely, that it offers sample products "at no cost, or "for free." Nothing requires the exercise of imagination, cogitation, mental processing or gathering of further information in order for purchasers of and prospective customers for applicant's services to readily perceive the merely

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descriptive significance of the term ATNOCOST.COM as it pertains to applicant's services. *See In re Dial-A-Mattress Operating Corporation*, No. 00-1197 (Fed. Cir. *decided* February 13, 2001) ["Although '1-888-M-A-T-R-E-S-S' is not generic for a service offering mattresses by telephone, [it is merely descriptive because] it immediately conveys the impression that a service relating to mattresses is available by calling the telephone number.")

Decision: The refusal under Section 2(e)(1) of the Act is affirmed.